

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/12/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM

Crl.R.C.No.493 of 2002

and

Crl.M.P.No.2364 of 2002

K.Rajamanickam .. Petitioner

-Vs-

1. Mrs. Thamizharasi

2. Ms. Usha .. Respondents

Revision filed against the Order dated 18.10.2001 passed by the Additional Sessions Judge, Vellore in Crl.R.P.No.18 of 1997.

!For Petitioner : Mr. R.Bhaskar,
for M/s. Ram and Ram.

^For Respondents : Mr.V.Karthic,
for Mr. T.S.Gopalan

:O R D E R

Aggrieved by the order of the learned Additional Sessions Judge, Vellore, dated 18.10.2002 made in Crl.R.P.18 of 1997 granting maintenance at the rate of Rs.275/- per month in favour of the first respondent herein and Rs.300/- per month, in favour of the second respondent herein, the petitioner/husband preferred the above revision.

2. It is the case of the first respondent herein that on 6.6.1971, she married the petitioner herein and they were having one son and two daughters. It is her case that they were having happy married life for a period of twelve years and thereafter, her husband ill-treated her. She further stated that the petitioner/husband sought for her consent for the second marriage which she refused. Further, on 11.3.1 983, he married one Krishnaveni and on her advice, he drove the first respondent herein when she was pregnant. She came to her parents' house and her efforts to join with her husband did not yield any fruitful results and therefore, she issued a legal notice on 6.6.1990 claiming maintenance. Since her demand was not complied with, she filed M.C.No.11 of 1992 before the Court of Judicial Magistrate-I, Tirupathur, under Section 125 Cr.P.C., claiming maintenance for herself and her minor daughter. The said petition was resisted by the husband/ petitioner herein by filing counter-statement. After denying all the averments made in

the maintenance petition, he stated that after selling his property, he gave Rs.61,275/-. He has also stated that he filed O.P.42 of 1992 before the Sub-Court, Tirupathur for divorce and the same is pending. She has means to maintain herself; hence they are not entitled to maintenance. Before the learned Magistrate, the wife was examined as P.W.1 and marked legal notice as Ex.P.1. On the side of the respondent therein, husband was examined as R.W.1 and one Pachaiammal was examined as R.W.2. Lawyer notice was also marked as Ex.R.1. The learned Magistrate accepted the case of the husband and ultimately dismissed the maintenance petition. Aggrieved by the same, the wife and the daughter preferred CrI.R.P.18 of 1997 before the Additional Sessions Judge, Vellore. The learned Additional Sessions Judge after considering the claim of both parties, accepted the case of the revision petitioners and granted maintenance at the rate of Rs.275/- and Rs.300 /- per month respectively, in favour of the respondents-1 and 2 herein. Questioning the said order, the husband has preferred the above revision.

3. Learned counsel appearing for the revision petitioner fairly states that the petitioner is mainly aggrieved only with regard to the direction of the learned Additional Sessions Judge, namely, directing him to pay the maintenance as ordered from the date of petition. By pointing out Sub-Section-2 of Section 125 Cr.P.C., the learned counsel for the revision petitioner would contend that the normal rule as per the provision is that, maintenance shall be granted from the date of order and only in exceptional cases, direction shall be issued from the date of application for maintenance. In the light of the said contention, I have carefully perused the language which reads as under:

" Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance. "

From a reading of the above provision, it cannot be contended that in all cases, maintenance shall be granted from the date of order. If that is so, there is no need for the legislature to incorporate the specific sentence, "if so ordered, from the date of the application for maintenance." I am of the view that depending on the facts of each case, more particularly the grievance of the respondents, the Court can grant appropriate relief. In the present case, the learned Additional Sessions Judge has considered the stand taken by the husband and the claim of the petitioners that they are unable to maintain themselves. It is also seen from the evidence that the revision petitioner is employed in Railways and getting a reasonable income. The husband who examined himself as R.W.1 has deposed that he was getting Rs.1,200/- per month. In the absence of production of salary certificate from his employer and in view of the statement of P.W.1 that he is earning Rs.2,500/- being an employee of the Railways which is a Central Government Organisation, the learned Sessions Judge has concluded that he was earning more than Rs.3,000/- per month. On the other hand, it is seen from the evidence of P.W.1 that she was a beedi roller and she got Rs.35/- in a week and the job is of casual nature.

4. It is relevant to refer a decision of this Court reported in *Gnanaselvi and 2 others v. Illavarasan* (1998-2-L.W.(CrI.) 614, wherein the Hon'ble Justice Karpagavinayagam has considered the very same subsection-2 and observed that, "the normal rule is to grant maintenance from the date of application and not from the date of order."

The learned Judge further observed that,

" It is only where there are exceptional cases for valid reasons, it is open to the Magistrate to grant maintenance from the date of the order. " I am in respectful agreement with the view of the learned Judge.

5. Taking note of all the above details and in the light of the language used in Sub-Section-2 of Section 125 Cr.P.C., I am unable to appreciate the contention of the learned counsel for the petitioner and I am in agreement with the order of the learned Additional Sessions Judge. Therefore, the revision fails and the same is dismissed. Consequently, Crl.M.P.2364 of 2002 is closed.

Index: Yes

Web Site: Yes

vs

To:

1) The Judicial Magistrate No.1,
Tirupathur.

2) The Additional Sessions Judge
Vellore.

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